

L. A. IDLER (SUPP.)

IBLA 76-754

Decided November 5, 1976

Appeal from the August 13, 1976, decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W-50976.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. Where the land is part of a designated winter pasture for a large elk herd, and it has been determined that oil and gas operations would adversely affect that use of the land to a substantial extent, rejection of the lease offer will be affirmed.

APPEARANCES: L. A. Idler, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On May 13, 1975, L. A. Idler filed an oil and gas lease offer embracing 680 acres of described land in Fremont County, Wyoming. On the recommendation of the Area Manager, the Wyoming State Office of the Bureau of Land Management rejected the offer

because 1) the land is part of the area withdrawn by PLO 888 for the Wyoming Game and Fish Elk Winter Pasture; 2) the terrain is steep and access is inadequate, and 3) the soil is structurally weak and highly erosive.

On appeal from that decision to this Board, Idler alleged that another oil and gas lease had been issued effective March 1975 in the withdrawn area contiguous to most of the lands for which Idler had applied. He alleged that the topography and soil conditions were similar in each case, and that there was road access to all but 40 acres of the land for which he had applied. He noted that the issued lease had afforded protection to the elk herd by the incorporation of a special stipulation. He maintained that it was inequitable for the Wyoming State Office to issue one applicant a lease in the elk pasture in March and reject the offer which he filed in May for similar lands contiguous thereto.

In our review of the case pursuant to that appeal, we were unable to identify any reason for the different treatment of the two lease offers. We noted that PLO 888 did not withdraw the land from the operation of the mineral leasing laws, and there was no indication that the contiguous land had been leased as the result of error. Therefore, by our decision styled L. A. Idler, 24 IBLA 28 (1976), we vacated the decision appealed from and remanded the case to the Wyoming State Office for a determination as to whether there was any difference between the lands covered by Idler's offer and the lands leased in 1975, or whether there were other compelling reasons for the rejection.

By its decision of August 13, 1976, the Wyoming State Office again rejected the offer, from which action Idler has again appealed.

The record shows that after the case was remanded it was referred to the Manager of the Lander Resource Area for reconsideration and recommendation. His response indicated that he had reviewed the matter and had consulted with the Game and Fish Department of the State of Wyoming, which had written a letter opposing any mineral leasing or exploration on the elk range. The Manager stated that the issued oil and gas lease "was issued in error and should never have been allowed." He reiterated his recommendation that the lease offer be rejected on the basis of the potential disturbance of the elk, but he made no further mention of the topography, soil conditions or access.

The Wyoming Game and Fish Department writes that it had originally purchased land in this area in 1949 for a winter elk range and that presently there are between 2,000 and 2,500 elk

which are dependent on the area for natural forage during the winter. It is reported that prior to creation of the wintering ground the animals made extensive depredations on private ranch lands and haystacks along the East Fork drainage, which depredations have since been essentially eliminated. Because human intrusion into the area causes the elk to move to less desirable winter areas, the protected range is closed to any public vehicle travel during the critical winter period by Wyoming Game and Fish regulation, and administrative travel is limited to a single trip each winter to collect essential herd composition data.

The record, as it is now constituted, describes a devotion of the land to a public purpose which is worthy of preservation. Any development of a producing oil or gas field in the area, if such a field were to be found, would require year-round human activity which would not be compatible with the present use of the land. The question thus presented is whether a producing oil or gas field, of unknown size and quality, would be more or less in the public interest than is the maintenance of the elk population by use of the land as winter range.

That question has been answered by the Wyoming State Office in the decision appealed from. In *Rosita Trujillo*, 21 IBLA 289, 291 (1975), we said:

Appellant's contentions are neither erroneous nor unreasonable. They represent only another point of view; a different side of the ongoing controversy over the identification and priority of concerns which comprise the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Since the issuance of the lease of the contiguous lands was an acknowledged error, we will not redress the inequality of treatment by re-enacting and compounding the error in this case. George Brennan, Jr., 1 IBLA 4, 6 (1970).

Although the withdrawal of the land by PLO 888 specifically exempted the mineral leasing laws from its effect, this does not require issuance of mineral leases. The Secretary of the Interior, or one exercising his duly delegated authority, may in his discretion reject any offer to lease public lands for oil and gas upon a proper determination that the leasing would not be in the public interest, even though the land is not withdrawn from leasing under the Mineral Leasing Act. Cartridge Syndicate, 25 IBLA 57 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Joseph W. Goss
Administrative Judge

ADMINISTRATIVE JUDGE FISHMAN CONCURRING:

I heartily agree with the main opinion to the extent that it holds that the issuance of one lease in error is not a sufficient predicate for repeating the error by the issuance of another lease under the same circumstances. However, I find the main opinion wanting in that it uncritically accepts the thesis that the value of the land as an elk range is a sufficient basis to reject the oil and gas offer, without any consideration being given to the oil and gas potential of the land in issue. While unquestionably the affording elk adequate sustenance is a worthy venture, it is not entirely clear to me why oil and gas development would necessarily impinge upon that goal. Perhaps the fact that the soil is structurally weak and highly erosive interdicts such development.

In order to determine an order of magnitude of the comparative values of the land as sustenance for elk and its potential for oil and gas development, I informally contacted the U.S. Geological Survey.

The Geological Survey informed me that the area has a stratigraphic rock section that has a potential for oil and gas development. The area is highly faulted and has a complex geology. All of the rock section that has such potential is covered by tertiary, rocks (younger rocks), precluding the determination of whether a trap for oil and gas accumulation exists. There is some limited production about 5 miles to the northwest, but it is very poor production. There are 6 wells, each producing about 7-1/2 barrels per day. There is apparently no oil or gas drilling in the general area, embracing a radius of some 50 miles.

In view of the fact that meaningful and substantial oil or gas production seems remote, I deem use of the lands for elk range to the exclusion of oil and gas drilling to be warranted and therefore concur in the decision.

Frederick Fishman
Administrative Judge

